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April 3, 1998

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Ms. Magalie R. Salas
Secretary
Federal Communications Commission
Room 222
1919 M. Street
Washington, D.C. 20554

**VIA FEDERAL EXPRESS**

Subject: Petition of U S WEST Communications, Inc. for Relief from Barriers to Deployment of Advanced Telecommunications Services CC Docket No. 98-26

Dear Ms. Salas:

We have enclosed for filing an original and 12 copies of opposition of Electric Lightwave, Inc., to petition of U S WEST Communications, Inc., for relief from barriers to deployment of advanced telecommunications services.

Very truly yours,

R. Alan Wight

cc: Ms. Janice M. Myles
International Transcription Services, Inc.
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Before the
**FEDERAL COMMUNICATIONS COMMISSION**
**Washington, D.C. 20554**



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| Petition of U S WEST Communications, Inc. for Relief from Barriers to Deployment of Advanced Telecommunications Services | ) ) ) | CC Docket No. 98-26 |

# OPPOSITION OF ELECTRIC LIGHTWAVE, INC., TO PETITION OF U S WEST COMMUNICATIONS, INC., FOR RELIEF FROM BARRIERS TO DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS SERVICES

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April 3, 1998

## SUMMARY

Electric Lightwave, Inc. ("ELI"), opposes the petition filed by U S WEST COMMUNICATIONS, INC. ("U S WEST"), on or about February 25, 1998, in which U S WEST seeks permission (1) to build data networks across LATA boundaries and carry interLATA data traffic and (2) to avoid any requirement that it unbundle the network elements it is asking permission to construct and that it not be required to provide these facilities or services to competitors.

ELI's opposition to U S WEST's petition is based on several legal and factual contentions, including the following:

1. The modified final judgment in United States v. AT&T, 552 F. Supp. 131 (D.D.C. 1982), aff'd sub nom. Maryland v. United States, 460 U.S. 1001 (1983), prohibited regional Bell operating companies ("RBOCs") from carrying in-region interLATA traffic. Congress made the prohibition on providing in-region interLATA services statutory (47 U.S.C. § 271(b)(1), subject to eventual relief under 47 U.S.C. § 271 (added as part of the Telecommunications Act of 1996), although it allowed RBOCs to provide interLATA services originating outside of its in-region states (47 U.S.C. § 271(b)(2). Relief from 47 U.S.C. § 271(b)(1) can be granted only if an RBOC can prove (a) that it has entered into interconnection agreements with one or more facilities-based competitors, (b) that it provides nondiscriminatory access to network elements, facilities, and services, and (c) that it has taken all action described in the competitive checklist set forth in 47 U.S.C. § 271(c)(2)(B). The Federal Communications Commission

(the "Commission") is prohibited under 47 U.S.C. § 271(d)(4) and 47 U.S.C. § 160(d) from waiving or modifying the provisions of 47 U.S.C. § 271.

2. No RBOC has yet qualified under 47 U.S.C. § 271 to provide in-region interLATA services. On March 20, 1998, the United States Court of Appeals for the District of Columbia affirmed the decision of the Commission barring SBC Communications ("SBC") from providing long-distance service in Oklahoma (the Commission concluded that SBC had failed to open its local market to competitors, as required by 47 U.S.C. § 271).

3. U S WEST cannot qualify for permission under 47 U.S.C. § 271 because it has not met its competitive obligations in its region in accordance with 47 U.S.C. §§ 251 and 252 and the checklist contained in 47 U.S.C. § 271.

4. U S WEST's petition for permission to carry interLATA data traffic is an attempt to avoid the necessity of complying with the conditions imposed by Congress in 47 U.S.C. § 271 to qualify for construction and operation of telecommunications networks across LATA boundaries.

5. U S WEST's proposed data services network in its western states region will not provide new facilities and services not otherwise available, but instead will largely duplicate the data network facilities of ELI (a) by installing large-capacity switches and points of presence ("POPs") in the same cities and (b) by running main fiber-optic trunks between those cities along the same paths as ELI.

6. U S WEST has been directed by state commissions and state legislatures to improve its performance, but problems are ongoing. As state commission orders show, U S WEST has not made the investments in equipment and facilities in its 14-state region needed to avoid call blocking and to allow competitors to build their facilities within a reasonable time. Instead, U S WEST has spent available funds to construct a data network outside its 14-state region and to develop a proposed in-region network.

7. U S WEST has filed simultaneous petitions in the 14 states in its region, seeking removal of its local area data service ("LADS") tariff because LADS can be used by Internet service providers ("ISPs") to provide data service in rural areas at a lower price than the price for the high-speed digital subscriber line technology ("xDSL") that U S WEST proposes to offer.

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## PRELIMINARY STATEMENT

### 1. U S WEST cannot avoid compliance with 47 U.S.C. § 271.

Viewed in factual and legal perspective, it is clear that U S WEST's petition is anticompetitive (not procompetitive) and that there is no basis for granting the petition.

In its petition, U S WEST acknowledges that "[t]he primary goal of the Telecommunications Act . . . is 'to promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.' Pub.L.No. 104-104, 110 Stat. 56 (1996)." (U S WEST's Pet. at 2.)

By emphasizing the promotion of "competition" in the Telecommunications Act of 1996, however, Congress plainly intended that companies other than the incumbent RBOCs would be allowed to build equipment and facilities (or obtain unbundled equipment, facilities, or services from the incumbent RBOCs) and to interconnect on a basis that provided equivalent operation and seamless transfer of traffic from one system to another, so that these new competitors could give the consumer a choice of service and equipment and lower prices. This stage was to be achieved before RBOCs could be allowed to build facilities for in-region interLATA traffic because RBOCs owned and controlled bottleneck facilities and could prevent the development of effective competition. (The definition of "compete" is "[t]o strive with another or others to attain a goal," suggesting the fundamental requirement that more than one capable alternative be available. American Heritage Dictionary (3d ed. 1992).)

To this end, Congress provided in the Telecommunications Act of 1996 that the incumbent RBOC has the duty to provide interconnection with its local exchange network "that is at least equal in quality to that provided by the local exchange carrier to itself or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection." 47 U.S.C. § 251(c)(2)(C). Regulations promulgated by the Commission direct that an incumbent local exchange carrier ("ILEC") provide a level of quality equal to that which the ILEC provides itself; "[t]his obligation is not limited to a consideration of service quality as perceived by end users, and includes . . . <u>service quality as perceived by the requesting telecommunications carrier</u>." 47 C.F.R. § 51.305(a)(3) (emphasis added).

Under the modified final judgment, RBOCs were prohibited from building facilities for or carrying interLATA traffic. In passing the Telecommunications Act of 1996, Congress determined that the existing legal prohibition against RBOC carriage of in-region interLATA traffic could eventually be lifted, but only if the RBOCs allowed the kind of interconnection described in 47 U.S.C. §§ 251 and 252 and allowed genuine competition to come into existence and flourish. 47 U.S.C. § 271. To ensure that RBOCs not be allowed to leapfrog the obligation to allow competition to come into existence, Congress provided a detailed competitive checklist that had to be met in every particular before the Commission could grant RBOC authority for the provision of any type of in-region interLATA services. 47 U.S.C. § 271(c)(2)(B).

**2. U S WEST cannot meet the conditions of 47 U.S.C. § 271.**

No RBOC has yet been able to prove to the Commission and the Department of Justice that it has complied with the requirements of 47 U.S.C. § 271 and that it deserves to be allowed to enter into the business of providing interLATA services under the conditions imposed by Congress. U S WEST has not obtained permission for provision of in-region interLATA services and until March 1998 had not even started the process by filing a petition at the state level (U S WEST recently filed a petition with the Montana Public Service Commission). Instead, U S WEST has sought to go around 47 U.S.C. § 271 requirements in several ways: (a) by bringing litigation in federal court in Texas (outside U S WEST's 14-state region) that seeks a declaration that 47 U.S.C. § 271 is unconstitutional as a "bill of attainder" and (b) by filing its petition with the Commission in this proceeding and claiming that Section 706 of the Telecommunications Act of 1996 somehow allows the Commission to carve out an exception to the strict and exclusive method provided under 47 U.S.C. § 271 to qualify to provide in-region interLATA services.

In a footnote hidden within its petition, U S WEST contends that it "has fully implemented Section 251" but that it has not yet obtained Commission approval under Section 271 to provide interLATA services. (U S WEST's Pet. at 36 n.15.) The implication of that sentence is that U S WEST considers that it has provided interconnection to competing carriers that is at least equal in quality to that provided to itself or any other party.

**3. 47 U.S.C. § 157 does not give the Commission the power to modify the requirements of 47 U.S.C. § 271.**

47 U.S.C. § 157 provides no ground for allowing U S WEST to build an interLATA data communications network in its region without fully complying with 47 U.S.C. § 271. The available factual information also shows that U S WEST need not provide interLATA data facilities so that persons in the region will have access to data services. Instead, the undisputed facts are (a) that advanced data telecommunications capability is being deployed in U S WEST's 14-state region by U S WEST's competitors and

(b) that U S WEST's proposal, in large part, would duplicate the equipment and facilities of ELI and other competitors.

The Commission should also consider the following:

a. Although U S WEST contends that rural customers are not receiving adequate data communications services and that U S WEST is committed to serving rural areas, U S WEST has sold many of its rural exchanges over the last four to five years.

b. U S WEST's provision of equipment, facilities, and services to competitors that want to provide high-speed services has been subject to large delays. In U S WEST's region, it has taken months for competitors to obtain T-1 service and switching facilities.

c. Although U S WEST contends that rural customers are not being provided with data services in its region, U S WEST's out-of-region data network also seems to have a focus on large metropolitan areas. Illustration 12 shows that all (or nearly all) of U S WEST's out-of-region DS-3 POPs are located in large population areas--the same types of metropolitan areas that U S WEST says that its competitors serve with DS-3 POPs in U S WEST's region. (U S WEST's Pet. at 28.)

d. U S WEST has come under heavy criticism from state utilities commissions for failing to invest in its existing network. The Washington Utilities and Transportation Commission (the "WUTC") entered an order in UT-950200 criticizing U S WEST for failing to invest in its local exchange network. The WUTC recently entered another order describing call blocking far in excess of that permitted under WUTC regulations or under interconnection agreements. The Utah legislature just weeks ago passed a new statute providing for penalties for lack of compliance with Utah statutes and regulations that established call blocking and interconnection service quality standards. (Fourth Substitute H.B. 115, Telecommunications Amendments, 1998 Utah Leg. Gen. Sess., §§ 1, 2 (proposing new Utah Code Ann. §§ 54-8b-16, -17.) The Iowa Utilities Board entered an order imposing a penalty of $10,000 a day for U S WEST's failure to identify performance standards and measurements.

## BACKGROUND FACTS

### 1. Nature of ELI's business.

ELI is a full-service, facilities-based competitive local exchange carrier ("CLEC") providing a broad range of telecommunications services in five major market clusters in the western United States. (Four of those market clusters are in U S WEST's 14-state region.) ELI provides equipment and facilities of the highest and best technology for voice and data communications services. A high percentage of ELI's retail customers are large- and medium-sized communications-intensive businesses. Other ELI customers are wholesale customers (primarily telecommunications service providers or ISPs). ELI operates extensive digital fiber-optic networks based on a switched broadband platform in each of its five market clusters (the customers actually include six metropolitan statistical areas, including 59 municipalities). As of December 31, 1997, installation of 2,494 route miles, 104,812 fiber miles, and 34,328 local access line equivalents had been accomplished, and

610 buildings had been connected. ELI interconnects its market clusters with facilities-based owned and leased long-haul fiber-optic networks.

By the end of 1997, ELI was providing services in five markets: Portland, Oregon; Seattle, Washington; Salt Lake City, Utah; Sacramento, California; and Phoenix, Arizona and their surrounding areas. As of the date of this writing, ELI offers a full range of data services in Los Angeles and San Francisco and is bringing Boise on-line. ELI currently provides switched services, including local dial tone, utilizing five Nortel DMS 500 switches. ELI expects to initiate local dial-tone service in Phoenix with the installation of an additional switch in the first half of 1998. ELI's clusters are also served by an extensive frame relay network comprising 18 state-of-the-art switches and 30 POPs in 26 western United States cities. ELI has developed an Internet backbone network providing Internet connectivity in each of its markets (including access on a redundant basis to the three largest ISPs in the United States). ELI's goal by the end of 1998 is to add or expand its market presence from the six existing metropolitan statistical areas to 12 metropolitan statistical areas and to expand its two long-haul networks to five long-haul networks.

ELI offers products and services in four categories, including local telephone, long distance, data and video, and network access. ELI provides local dial tone, with voice mail and enhanced features; long distance with calling cards; advanced data services (including frame relay, international frame relay, and high-speed Internet access; connectivity; and transport); video conferencing and dialable wideband services; LAN-to-LAN services with very high transport speeds; integrated services digital network ("ISDN"); and point-to-point communications and dedicated DS-1s and DS-3s. ELI expects to provide asynchronous transfer mode services during 1998.

Since beginning to build facilities and install equipment in 1990, ELI has been at the forefront of industry efforts to introduce competition to the local telecommunications markets. Thus, ELI has achieved significant milestones in the CLEC industry and has been well positioned to benefit from the opening of local telecommunications markets. Before the passage of the Telecommunications Act of 1996, ELI aggressively pursued regulatory and legislative reform. Through litigated decisions, ELI won the right to provide local service in the state of Washington before passage of the Telecommunications Act of 1996. ELI was early to market in Portland, Seattle, Salt Lake City, and Sacramento and was the first CLEC to receive authority from a state regulatory authority west of the Mississippi River to operate and offer a full switch-based product portfolio.

ELI's strategy has also been to interconnect the market clusters with facilities-based broadband, long-haul fiber-optic networks. By carrying traffic on its own facilities, ELI has been able to improve the utilization of network facilities and avoid lease charges and interconnection costs.

ELI has constructed extensive voice, frame relay, Internet backbone, and interconnecting long-haul networks. Each of ELI's operating clusters includes an extensive fiber-optic network backbone. Approximately half of ELI's services provided to customers are currently on-net.

**2. U S WEST's petition seeks permission to build an interLATA data network similar to ELI's existing interLATA data network, with switches, POPs, and major long-haul fiber-optic networks located at essentially the same geographic points.**

The factual presentation in U S WEST's petition is incomplete and misleading. U S WEST takes up 20 pages in its petition arguing that the Commission should allow it to provide interLATA data services because facilities for data services are not otherwise available in the largely rural states in its region. U S WEST purports to give a complete and accurate description of equipment and facilities owned by competitors and the location of major switches and major long-haul fiber-optic networks by including several maps showing the location of competitive facilities, interpolating data from Boardwatch magazine. (U S WEST's Pet. at 6-26.) U S WEST then provides a map (Illustration 14) showing the location of projected switches and long-haul fiber-optic networks it would build if its petition were allowed. (U S WEST's Pet. at 33.)

Incredibly, U S WEST's 54-page petition never mentions ELI or the location of ELI's switches, its long-haul fiber-optic networks, or its POPs. U S WEST seems to dwell on DS-3 capacity and below, whereas ELI currently sells OC-3, OC-12, and OC-48 systems and has an OC-192 system available between Portland and Seattle. For purposes of presenting U S WEST's petition, it is as though ELI does not exist.

For example, U S WEST discusses what it claims are the only existing DS-3 links in its 14-state region, stating that the switches, POPs, and long-haul fiber-optic networks are sparse and that these systems have not made provision for the smaller communities. (U S WEST's Pet. at 9.) Illustration 1 in U S WEST's petition purports to show that only Denver, Phoenix, Tucson, and Seattle have DS-3 links. (U S WEST's Pet. at 10.) Illustration 2 shows Denver and Minneapolis as the only 45 megabits per second DS-3 backbone cities. (U S WEST's Pet. at 11.) U S WEST avoids presenting data about ELI or other regional carriers by stating that it has identified the switches of "the largest backbone networks." (U S WEST's Pet. at 9 (emphasis added).) Similarly, in subsequent pages, U S WEST furnishes maps showing equipment and facilities of what it terms as "thirty-eight national backbone providers" but does not include ELI. (U S WEST's Pet. at 17.) By excluding ELI from consideration, U S WEST is able to assert that only 9 of the 27 LATAs in U S WEST's region are served by more than one high-speed POP and that 17 of the 27 LATAs are not served at all. (U S WEST's Pet. at 17.) Illustration 8 therefore shows only one switch in Salt Lake City, one switch in Phoenix, and one switch in Portland, even though ELI alone already has switches in each of those cities. (U S WEST's Pet. at 18.)

U S WEST's failure to provide data about ELI did not stem from the lack of available information. The same Boardwatch article that U S WEST used to identify the switches and facilities of AT&T and other carriers also has detailed information about ELI, including a map. See Electric Lightwave, Inc. <http://www.boardwatch.com/isp/fall97/eli.html> (copy attached as Ex. A). Because the Boardwatch map of ELI equipment and facilities would be difficult to reproduce, ELI submits its own map in a clearer format. (See Ex. B.) If U S WEST had provided the Boardwatch data sheets and map showing the location of ELI's switches, POPs, and long-haul fiber-optic networks, that map would look startlingly like the map of U S WEST's proposed in-region interLATA data network for the area of the Rocky Mountain Divide to the Pacific Coast.

The unavoidable fact is that U S WEST is proposing to build an interLATA data network that is highly similar to ELI's existing interLATA data network (its toughest new competitor in the region). U S WEST's petition is misleading in suggesting that advanced services will be available in much of its territory only if its petition is granted. In fact, alternative facilities are already in place.

**3. U S WEST has made competitive equality difficult for ELI and other CLECs by discriminating in the provision of equipment, facilities, and services and by refusing to obey state commission orders designed to eliminate anticompetitive behavior.**

In the 18 months since ELI began to interconnect with U S WEST's local exchange networks, ELI has encountered many problems (including a high incidence of call blocking and U S WEST's failure to provision trunks as ordered), apparently designed to frustrate competition and make it appear to customers that ELI's equipment, facilities, and services are not as good as those of U S WEST. After experiencing those problems for more than a year, ELI filed a complaint against U S WEST under the federal antitrust laws in the United States District Court for the Western District of Washington. A copy of the complaint in that case is attached as Ex. C.

The problems ELI has encountered in dealing with U S WEST are a catalog of the types of problems that would prevent certification of an RBOC for interLATA services under 47 U.S.C. § 271. Those problems and the state commission orders relating to those problems are as follows:

**a. U S WEST has allowed inordinate call blocking and disconnects to develop for CLECs, while finding ways to carry traffic originating and terminating on its own network with little or no call blocking.**

When CLECs were allowed to interconnect with U S WEST's local networks, a high incidence of call blocking and disconnects immediately became obvious.

For example, as early as 1993, the WUTC promulgated network performance standards applicable to local exchange companies, which provides in pertinent part:

(1) Central office.

. . . .

(ii) Complete dialing of called numbers on at least ninety-eight percent of telephone calls placed without encountering a busy condition within the central office or in interoffice trunks.

. . . .

(2) Interoffice facilities.

(a) Local and EAS interoffice trunk facilities shall have a minimum engineering design standard of B.01 (P.01) level of service.

(b) Intertoll and intertandem facilities shall have a minimum engineering design standard of B.005 (P.005) level of service. Service to an interexchange carrier shall be provided at the grade of service ordered and specified by the interexchange carrier.

WAC 480-120-515.

U S WEST's consistent failure to meet the standards in WUTC rules has come to the attention of the WUTC many times. Recently, the WUTC ordered U S WEST to comply with the standards in WAC 480-120-515.

**b. U S WEST refuses to invest adequate money in switches, trunks, or other equipment and facilities necessary to adequately handle traffic from CLECs.**

When confronted with CLEC problems of busy signals, call blocking, and disconnects, U S WEST has frequently taken the position that it does not have to invest in equipment or facilities needed to improve service and comply with regulatory or contract standards. Instead, U S WEST tends to shrug off the problem as being one caused by consumers who are spending more time on the network when using data transmissions than if only voice transmissions were involved. In fact, U S WEST makes that very same contention in its petition before the Commission.

On March 13, 1996, the WUTC issued an order addressing the type of interconnection service that U S WEST was required to provide to CLECs.

WUTC v. U S WEST, Nos. UT-941464, UT-941465, UT-950146, UT-950265, Ninth Supplemental Order Rejecting Tariff Filings, at 19-20 (Mar. 13, 1996).

The WUTC ruled in pertinent part:

> The Commission rejects USWC's proposed language limiting its obligation to provide interconnection service. In proposing this limit, USWC has fundamentally misinterpreted the effect of the interconnection orders. The clear intent of the Fourth Supplemental Order was that each company would be required to build sufficient facilities from meet points back through its network. USWC has an obligation to interconnect with other carriers and deliver the messages originating from the customers of those carriers, set out in Constitution Art. 12, Sec. 19. That section provides that all companies in the business of providing telephone service "shall receive and transmit each other's messages without delay or discrimination." That is a basic duty of every local exchange telephone company in this state, including USWC and its competitors. USWC has an obligation to provide whatever facilities are necessary on its side of meet points to complete local calls that are delivered to it by originating local exchange companies.
>
> USWC's argument that all its competitors offer service subject to the availability of facilities and that it therefore can do the same for interconnection is without merit. That argument confuses the circumstances under which a carrier offers services to its customers and those under which one carrier offers service to another carrier. The Commission will not allow any carrier, regardless of the terms offered to its own customers, to condition its obligation to interconnect at meet points and to complete local calls delivered by originating carriers on the availability of facilities.
>
> USWC's argument that its interconnection obligation is somehow limited because it is not allowed to charge competitors for the cost of building the facilities used in interconnection also is without merit. USWC's argument suggests that it misunderstands the basis on which we adopted mutual traffic exchange as the interim compensation mechanism. The basis for bill and keep was not a conclusion that interconnection will not cause carriers to incur costs. It is clear that, for both interconnecting companies, costs would be lower if they simply offered service to customers on their own network and did not interconnect with other networks. They do not have the option of offering such limited service. Since interconnection requires each carrier to invest in facilities it otherwise would not require, we found it reasonable, on an interim basis, that each carrier bear those costs and receive, in consideration, the use of the other carrier's interconnection facilities. While USWC will not receive monetary payment from ALECs for provisioning terminating facilities on its side of meet points and completing ALECs' calls during the interim period,

> USWC also is not required to pay ALECs for their interconnection facilities or call termination. The choice of a compensation mechanism, be it mutual traffic exchange or explicit rates, has no bearing on the mutual obligations of each LEC to interconnect with one another and to terminate one another's messages.

Id. (emphasis added) (footnote omitted).

U S WEST has not invested in equipment and facilities necessary to correct call blocking and disconnects. See WUTC v. U S WEST, No. UT-970766, Tenth Supplemental Order Rejecting Tariff Revisions (WUTC Jan. 16, 1998) (copy attached as Ex. D). As appears from its petition to the Commission, U S WEST has invested in expensive equipment to construct a data network outside its region. In other words, U S WEST has made a conscious choice to spend capital outside its region, to leave customers within its region with the poorest service in the entire nation, and to discriminate against CLECs in quality of equipment, facilities, and services.

**c. U S WEST has not provided workable operations support systems.**

Basic to any workable regimen under which a CLEC must order equipment and facilities from an ILEC is access to up-to-date operations support systems ("OSS") (electronic access for ordering, order confirmation, order following, and timely installation).

Despite constant requests from CLECs, U S WEST persists in offering a system that requires manual intervention. (Orders are transmitted by fax or are partially transmitted by computer and then are manually entered by U S WEST employees.) U S WEST provides little instruction on how to operate its ordering system. U S WEST's system is set up so that a few defaults will cause an order to be entirely rejected. Rejection can occur if only one or two minor errors show up in the fields. Further, U S WEST's current Internet gateway system is limited in scope. It does not support many of the services likely to be of most importance to facilities-based CLECs, such as trunk-side services, orders for large numbers of lines, and unbundled network elements.

U S WEST has not confirmed orders promptly. Further, even when U S WEST has confirmed orders, it has not met the dates on which it has promised completion of installation.

On many occasions, U S WEST has notified CLECs that orders are being "held." ELI believes it is entitled to nondiscriminatory access to U S WEST's OSS on appropriate terms and conditions that comply with FCC Part 51.319 rules and Section 251(c)(3) of the Telecommunications Act of 1996.

U S WEST's obligation should be to provide systems and equipment that will flow ELI's orders through the system at rates that are at parity with the rates at which analogous orders provided by U S WEST's own retail or internal operations proceed through the system.

**d. U S WEST refuses to agree to standards or measurements.**

Shortly after some CLECs had been able to achieve basic interconnection arrangements with U S WEST under the Telecommunications Act of 1996, the CLECs began experiencing problems that they suspected were not being shared by U S WEST. In other words, the CLECs suspected that U S WEST was acting in a discriminatory fashion in failing to provide equivalent interconnection equipment and facilities.

Basic to proof of discrimination is the ability to show the standards that the ILEC is observing for itself or providing to others and the measurements that are in existence or should be in existence to show that the ILEC is meeting those standards. In several states in U S WEST's 14-state region, state commissions ordered U S WEST to identify the standards and measurements it had in effect. The Iowa Utilities Board imposed a penalty of $10,000 a day on U S WEST, to continue until U S WEST had correctly and fully answered. Similar issues revolving around U S WEST's failure to commit to meeting service standards are under consideration in Arizona and Colorado.

**e. U S WEST has not provided acceptable order processing intervals or provisioning intervals.**

In each state in which ELI interconnects with U S WEST, ELI has experienced order processing and provisioning delays. Time after time, U S WEST has "held" orders. U S WEST does not provide certainty about provisioning intervals and frequently does not meet deadlines.

**f. U S WEST has not adequately participated in joint planning and forecasting activities.**

ELI believes that to facilitate efficient network interconnection and assist in the preparation of trunk and facility forecasts, ELI should have accurate and full disclosure of U S WEST's network information.

A recent example of difficulty in joint planning arose in conjunction with ELI's market entry into Boise. ELI was unable to efficiently design its Boise network because of significant difficulty in obtaining accurate information from U S WEST regarding its tandem and end office network architecture.

In an attempt to obtain provisioning of orders for interconnection facilities in a timely fashion, ELI has engaged in a joint planning and forecasting process. ELI expected that U S WEST would build to ELI's forecasted quantities and would provision interconnection facilities that had been ordered within a reasonable period. U S WEST, however, has not treated planning and forecasting as binding.

State commissions in the 14-state region in which U S WEST is the primary ILEC have entered numerous orders in the past 18 months, attempting to compel U S WEST to provide CLECs with some of the equipment and facilities or services discussed above. The following are just a sample of some of the orders:

i. **In re TCG Colorado Petition for Arbitration, No. 96A-329T, Order Rejecting U S WEST's Second Filing of Service Standards and Related Enforcement Provisions (CPUC Apr. 22, 1997).**

A second filing by U S WEST was necessary because of the directive by the Colorado Public Utilities Commission ("CPUC") that U S WEST make known "'standards presently utilized by USWC in the provision of <u>its own</u> services . . .' and that 'those service standards and related enforcement provisions presently applicable to the Company or relied upon by the Company shall be filed [by USWC] with the Commission and served upon each Petitioner.'" Order at 2. A copy of the Order is attached as Ex. E.

On March 5, 1997, the CPUC reviewed U S WEST's second filing for compliance with its Order and "found it to be insufficient." Order at 8.

> As recommended by AT&T and TCG, we directed Commission Staff to prepare a notice of Proposed Rulemaking based upon service quality metrics proposed by the CLECs, since the continuing delay in obtaining an adequate filing from USWC was harming our ability to implement the Act and HB 1335.

Order at 8 (footnote omitted). The CPUC went on to state that U S WEST "failed to cooperate with this Commission in its attempt to fulfill its role as an arbitrator," in violation of Section 252(b)(4)(B) of the Act, and "failed to negotiate in good faith as defined within § 252(b)(5) of the Act." Order at 9-10.

Regarding the internal service measurements employed by U S WEST, the Order states:

> For instance, within its February 18, 1997 submittal, USWC notes within a short narrative entitled "U S WEST Communications Response to AT&T Interconnect/Unbundled Elements/Combinations" that it has the ability to measure switching on an aggregate level as well as a feature group level. . . .
>
> Nonetheless, no information about measurement of switching performance was provided by USWC, although switching is an unbundled element that USWC must provide to CLECs on a stand-alone basis under the Act.
>
> . . . [T]here does not appear to be any reference to repair or installation standards for basic exchange services in the USWC response. Primarily, this concern has historically focused on the loop which USWC must also offer as an unbundled element to CLECs.

Order at 13 (footnote omitted).

Regarding U S WEST's response regarding performance metrics, the CPUC further states in its Order:

> We note that performance metrics for billing purposes may very well be important to CLECs, just as they apparently are to interexchange carriers ("IXCs").
>
> This question as to whether USWC is unilaterally limiting its response to current performance metrics for its existing local services further highlights the comments of AT&T and TCG that certain performance metrics are reported to IXCs. In terms of performance metrics for directory assistance, the AT&T DMOQs DA1 through DA5 as contained in Exhibit 15 in the arbitration proceeding are remarkably similar to the descriptions of performance metrics contained within footnote 6 of the AT&T and TCG comments. However, within the February 18, 1997 supplemental filing, pages 5 and 6, there is no specific indication as to whether these are USWC measurements, even if for interexchange access service purposes. Furthermore, USWC appears, in column 3 on these pages, to be unilaterally